

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

ENCORE PROPERTY MANAGEMENT OF
WESTERN NEW YORK, LLC,

Appellant,

DECISION AND ORDER
18-CV-6173 CJS

vs.

WELLS FARGO BANK, N.A. as Trustee,

Appellee.

Siragusa, J. This Bankruptcy appeal is before the Court on Appellee Wells Fargo Bank, NA, trustee's motion to dismiss the appeal as moot. Citing the Second Circuit's summary order *In re: Young v. Shabot*, 242 F.3d 369 (2d Cir. 2000), Appellee contends that since the foreclosure sale has already taken place, this appeal is moot. In *Young*, the Second Circuit wrote: "The law is clear that once a foreclosure sale has taken place, the appeal is moot." *In re Young*, 242 F.3d 369 (2d Cir. 2000) (citing *Licensing by Paolo, Inc. v. Sinatra*, 105 F.3d 837, 839 (2d Cir.1997)).

Here, Appellee's counsel's affidavit makes it clear that in a Decision and Order filed on February 16, 2018, the Honorable Paul R. Warren dismissed Appellant's Chapter 11 case as filed in bad faith. Lyster Aff. Ex. B, May 17, 2018, ECF No. 7-4. The dismissal lifted the automatic stay. 11 U.S.C. § 362(c)(2)(B); 9A Am. Jur. 2d Bankruptcy § 1198 (2018) ("The stay of certain acts against a debtor and the bankruptcy estate entered at the start of the bankruptcy case is terminated when the bankruptcy case is dismissed."). Appellant filed an appeal in this Court on February 28, 2018, and filed its designation of record and statement of issues on March 7, 2018. Appellee filed its designation of record on April 10, 2018.


Appellant did not seek a stay of Judge Warren's dismissal order. Although it has specified transcripts of hearings held before Judge Warren, Appellant has failed to order the transcripts within the time period provided for by Bankruptcy Rule 8009(b), and has not filed a brief. In short, Appellant has not perfected its appeal over the past two months and three weeks.

Following Judge Warren's dismissal, on April 12, 2018, Appellee held a foreclosure sale pursuant to a judgment of foreclosure entered in Supreme Court, Monroe County, on January 28, 2010. The properties listed in the Schedule for the Bankruptcy case sold, with total proceeds of \$71,750,000 out of \$117,765,371.23 owing as of January 8, 2018. Only two parties were in contention over the sold properties: Appellant and Appellee.

Appellee's counsel states in his affidavit supporting expedited relief that some purchasers are reluctant to close on the purchases until this case is completed. Further, after June 12, 2018, no further extensions of the closing date are available. Therefore, the Court granted Appellee's motion for expedited relief. The Court's motion scheduling order, issued and served on May 21, 2018, set the response date to May 29, 2018. As of May 30, Appellant has not responded to Appellee's motion to dismiss. Therefore, it is hereby

ORDERED, that Appellee's motion, ECF No. 7, is granted and Appellant Encore Property Management of Western New York, LLC's appeal, ECF No. 1, is dismissed as moot and for failure to perfect.

DATED: June 1, 2018
Rochester, New York



CHARLES J. SIRAGUSA
United States District Judge